IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5328 OF 2005

Shri Digambar Dhondu Mhatre & ors. Petitioners
vs.
M/s.Rajaram Construction & anr. Respondents

Mr.R.S.Datar for the petitioners.

Mr.S.M.Oak with Mr.Ambar Joshi for the respondent no.1.

Mr.R.S.Apte for the respondent no.2.

CORAM : S. A. BOBDE,J.

DATED : 19th October 2005

P.C.

On 25.4.2002 the trial Court, on the application of the petitioner, appointed a Commissioner. For a period of three years, the petitioners did not pay the commission fees. When the matter came up for evidence before the trial Court, the petitioner, who are original plaintiffs made an application for fresh order of commissioner under Exhibit 22. This application has been rejected on the ground that the matter is part-heard and the plaintiffs have applied for fresh order of commission after having led their evidence. While, it may be argued that the trial Court ought not to have reconsidered the propriety of the order which directed appointment of commission. Having regard to the conduct of the plaintiffs in not paying the fees, I

am of the view that no interference is called for in the impugned order because the plaintiffs have not paid the commission fees for a period of three years since April 2002 and applied for a Commissioner after he had concluded his evidence. I do not consider this to be appropriate case in the exercise of the extraordinary jurisdiction of this Court. The petition is, therefore, dismissed.

(S. A.BOBDE,J.)